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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 15-3635

ROBERT GONZALEZ, APPELLANT,

V.

ROBERT A. McDONALD,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before KASOLD, *Judge*.

MEMORANDUM DECISION

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

KASOLD, *Judge*: Veteran Robert Gonzalez appeals through counsel an August 10, 2015, decision of the Board of Veterans' Appeals (Board) that denied a compensable rating prior to July 17, 2007, for psoriasis¹ and a rating in excess of 60% thereafter. Mr. Gonzalez argues that the Board erred by (1) failing to discuss favorable evidence, (2) failing to apply 38 C.F.R. § 4.3 (resolving reasonable doubt), § 4.7 (selecting higher of two rating schedules), and § 4.21 (applying the rating schedule), (3) misinterpreting 38 C.F.R. § 3.321(b)(1) (extraschedular consideration), and (4) providing inadequate reasons or bases in support of its decision. The Secretary disputes these arguments. Single-judge disposition is appropriate in this case. *See Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990). For the reasons discussed below, the Board decision on appeal will be affirmed.

Mr. Gonzalez is rated for psoriasis under 38 C.F.R. § 4.118, Diagnostic Code (DC) 7816, which provides a (1) compensable rating when at least 5% of the body is affected or systemic therapy is required, and (2) noncompensable rating when less than 5% of the body is affected and no more

¹ Psoriasis is a skin condition that manifests by symptoms such as itchy, dry, scaling patches. DORLAND'S ILLUSTRATED MEDICAL DICTIONARY 1547 (32d ed. 2012).

than topical therapy is required.

In support of his first argument, Mr. Gonzalez notes that the Board did not discuss a March 2007 treatment note in the record reflecting his use of methotrexate – a systemic drug. Although the Board did not discuss this treatment note, the record reflects that methotrexate was prescribed for his psoriatic arthritis, a disability that is separately rated. Succinctly stated, Mr. Gonzalez fails to demonstrate that the treatment note was reasonably raised by the record as potentially materially favorable evidence as to the matter on appeal, and he otherwise fails to demonstrate that the Board erred by not discussing it. *See Hilkert v. West*, 12 Vet.App. 145, 151 (1999) (en banc) (appellant bears burden of demonstrating error on appeal), *aff'd per curiam*, 232 F.3d 908 (Fed. Cir. 2000) (table); *see also Robinson v. Peake*, 21 Vet.App. 545, 552-54 (2008) (holding that when an issue is not reasonably raised by the appellant or the record, the Board does not err in failing to discuss the issue), *aff'd sub nom. Robinson v. Shinseki*, 557 F.3d 1355 (Fed. Cir. 2009); *Thompson v. Gober*, 14 Vet.App 187, 188 (2000) (per curiam order) (requiring the Board to provide reasons for the rejection of material favorable evidence but not imposing such a requirement on all evidence).

Mr. Gonzalez's second argument is predicated on his assertion that the treatment note stating that his condition was not responding to two topical drugs reflects that his psoriasis required more than topical therapy, which he reasons required the Board to discuss §§ 4.3, 4.7, and 4.21. Mr. Gonzalez, however, fails to demonstrate that the treatment note reflects a requirement for more than topical therapy; indeed, the note reflects that the doctor's recommendation was to continue with topical therapy. Moreover, contrary to Mr. Gonzalez's contention, the Board noted and applied the referenced regulatory sections, and he fails to demonstrate that the Board erred in its application thereof. *See Hilkert, supra*.

In support of his third argument, Mr. Gonzalez notes that his psoriasis symptomatology included itching, shedding, crusting, and pain, and he contends that the Board failed to explain how these were contemplated by the rating schedule, and therefore the Board inadequately explained why referral for extraschedular consideration was not warranted. Although the Board did not specifically reference Mr. Gonzalez's assertion of pain, the Board noted his other reported symptoms and is presumed to have considered the entire record. *See Newhouse v. Nicholson*, 497 F.3d 1298, 1302 (Fed. Cir. 2007); *Janssen v. Principi*, 15 Vet.App. 370, 379 (2001) (rendering a decision on the

Board's statement of reasons or bases "as a whole"). Moreover, psoriasis manifests by symptoms such as itchy, dry, scaling patches,² such that the Board's explanation for finding that Mr. Gonzalez's symptoms were contemplated by his assigned rating is understandable and facilitative of judicial review, *see Allday v. Brown*, 7 Vet.App. 517, 527 (1995) (holding that the Board's statement "must be adequate to enable a claimant to understand the precise basis for the Board's decision, as well as to facilitate review in this Court").

In support of his fourth argument, Mr. Gonzalez contends that the Board failed to consider referral for extraschedular consideration premised on the collective impact of his disabilities, which rendered the Board's statement inadequate. To the contrary, however, the Board specifically found that referral for an extraschedular consideration on a collective-disability basis was not warranted because the record evidence did not indicate that his service-connected disabilities created such an exceptional circumstance that the schedular rating criteria were inadequate. Mr. Gonzalez fails to demonstrate that the Board's finding is clearly erroneous, *see Hilkert, supra*; *Gilbert v. Derwinski*, 1 Vet.App. 49, 52 (1990) ("A finding is "clearly erroneous" when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948))), and the Board's statement in support thereof is understandable and facilitative of judicial review, *see Allday, supra*.

Upon consideration of the foregoing, the August 10, 2015, Board decision on appeal is AFFIRMED.

DATED: November 29, 2016

Copies to:

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VA General Counsel (027)

² See note 1.